

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1283 CS Innovation Incentives
SPONSOR(S): Attkisson and others
TIED BILLS: HB 1285 **IDEN./SIM. BILLS:** SB 2728

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u>6 Y, 4 N, w/CS</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>Fiscal Council</u>	<u>15 Y, 6 N, w/CS</u>	<u>Gordon</u>	<u>Kelly</u>
3) <u>Commerce Council</u>	<u>10 Y, 0 N, w/CS</u>	<u>Olmedillo</u>	<u>Randle</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill increases eligibility criteria for Quick Action Closing Fund projects and appropriates \$50 million to the Quick Action Closing Fund.

The bill creates within the Office of Tourism, Trade, and Economic Development (OTTED) the Innovation Incentive Program (Program) for qualified innovation businesses. The purpose of the Program is to improve the state's ability to compete effectively in attracting science-based research projects of significant scale and world class excellence and innovation business projects to this state.

The bill appropriates \$250,000,000 from nonrecurring general revenue to OTTED for the fiscal year 2006-2007.

The bill requires Enterprise Florida, Inc. (EFI) to evaluate applications for incentive awards and make recommendations to OTTED, which in turn, shall make recommendations for approval to the Governor. The bill requires the Governor to consult with the Legislature and receive approval prior to releasing funds.

The bill also requires Enterprise Florida to develop business ethics standards that will apply to each innovation award recipient, to work with the State University System in setting the standards, and to report them to the Governor, Senate President and Speaker by December 31 of this year.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates the Innovation Incentive Program for qualified innovation businesses and appropriates \$250,000,000 from general revenue for the 2006-2007 fiscal year.

The bill provides additional eligibility criteria for Quick Action Closing Fund projects and appropriates \$50 million to the Quick Action Closing Fund.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Quick Action Closing Fund

The 1999 Legislature created the Quick Action Closing Fund (QACF) (s. 288.1088, F.S.) within the Office of Tourism, Trade, and Economic Development for the purpose of helping Florida compete for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities.² Enterprise Florida, Inc., evaluates proposals for the use of the Quick Action Closing Fund, and makes recommendations to OTTED.³

Once Enterprise Florida, Inc. makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval to the Governor. OTTED must also provide the Governor with proposed performance conditions the project must meet to obtain the incentive funds.

The Governor must consult with the Legislature before giving final approval for using the QACF for the project and must recommend approval of the project and release of moneys from the QACF pursuant to legislative consultation and review requirements of s. 216.177, F.S. This requires notice to the chair and vice chair of the Legislative Budget Commission.

Once approved by the Governor, OTTED enters into a performance contract with the business and establishes the conditions for payment of moneys from the QACF.

Enterprise Florida, Inc. shall validate the contractor's performance and provide a report regarding such performance to the Governor, the President of the Senate and the Speaker of the House, within 6 months after completion of the contract.

The Governor may, in an emergency or special circumstance, and in consultation with the Legislature pursuant to s. 216.177, reallocate unencumbered funds appropriated to the QACF to supplement statutorily created economic development programs and operations.

Effect of Proposed Changes

Background

In a press release dated January 30, 2006, Governor Bush launched new economic development initiatives to bolster the state's efforts to diversify and build Florida's Innovation Economy. To coincide with this initiative, the Governor is recommending a \$630 million investment in the 2006-2007 budget

² The 1996 Legislature created the Office of Tourism, Trade, and Economic Development (OTTED) in the Executive Office of the Governor. OTTED is responsible for promoting economic development, tourism, and international trade. OTTED oversees the activities public-private partnerships, including Enterprise Florida, Inc. (s. 14.2015, F.S.).

³ In 1992, the Legislature created Enterprise Florida, Inc. (EFI), to assist in the coordination of the state's economic development efforts and to develop a strategic plan for economic development for Florida (s. 288.901, F.S.).

for programs that will generate the innovation needed to create the industries of the future; this includes \$250 million to create the Florida Innovation Incentive Fund to enable Florida to take advantage of “once-in-a-lifetime opportunities” and big, statewide priorities that will yield a significant return for the tax payer in the long run.

Quick Action Closing Funds

Appropriations

The bill appropriates \$50 million to the Quick Action Closing Fund from nonrecurring funds from the General Revenue Fund in fiscal year 2006-2007.

The bill requires that Enterprise Florida, Inc. determine project eligibility to receive funds from the Quick Action Closing Fund based on the following criteria:

- The project must be located in a targeted industry as referenced in s. 288.106, F.S.
- Have a positive feedback ratio of at least 5 to 1.
- Be an inducement to the project’s location or expansion in the state.
- Pay an average annual wage of at least 125 percent of the areawide or statewide private-sector average wage.
- Be supported by the local community in which the project is to be located.

EFI, in consultation with the Office of Tourism, Trade and Economic Development, may waive the foregoing criteria during instances when the project would significantly benefit the local or regional economy.

Innovation Incentive Programs

Appropriations

The bill appropriates \$250,000,000 from nonrecurring general revenue to OTTED for the fiscal year 2006-2007. The bill provides that any unexpended balance from this appropriation shall be carried forward at the end of each fiscal year until the 2010-2011 fiscal year, at which time, any obligated funds for qualified projects that are not yet disbursed shall remain to be used for the purposes set out in the bill. Any unobligated funds of this appropriation shall revert to the General Revenue Fund unallocated at the end of the 2010-2011 fiscal year.

Innovation Incentive Program

The bill creates within OTTED the Innovation Incentive Program for qualified innovation projects. The purpose of the Program is to ensure the availability of sufficient resources to respond expeditiously to extraordinary economic opportunities and compete effectively for high value research and development and business innovation projects.

Definitions

The bill provides the following definitions:

- "Average private sector wage" means the statewide average wage in the private sector or the average of all private-sector wages and salaries in the county or in the standard metropolitan area in which the project is located as determined by the Agency for Workforce Innovation.
- "Brown field area" means an area designated as a brownfield area pursuant to s. 376.80, F.S.
- "Cumulative investment" means the total private investment in buildings and equipment made by an applicant under a project approved pursuant to this section.
- "Director" means the director of the Office of Tourism, Trade, and Economic Development.

- "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065, F.S.

- "Fiscal year" means the state fiscal year.
- "Innovation business" means a business expanding or locating in this state that is likely to serve as a catalyst for the growth of an existing or emerging technology cluster or will significantly impact the regional economy in which it is to expand or locate.
- "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs.
- "Match" means funding from local sources, public or private, which will be paid to the applicant and which is equal to 100 percent of the award. Eligible match funding may include any tax abatement granted to the applicant under s. 196.1995 or the appraised market value of land, buildings, infrastructure, or equipment conveyed or provided at a discount to the applicant. Complete documentation of match payment or other conveyance must be presented to and verified by the office before transfer of state funds to an applicant. An applicant may not provide, directly or indirectly, more than 5 percent of match funding in any fiscal year. The sources of such funding may not include, directly or indirectly, state funds appropriated from the General Revenue Fund or any state trust fund, excluding tax revenues shared with local governments pursuant to law.
- "Office" means the Office of Tourism, Trade, and Economic Development.
- "Project" means the location to or expansion in this state by an innovation business or research and development applicant approved for an award pursuant to this section.
- "Research and development" means basic and applied research in the sciences or engineering, as well as the design, development, and testing, of prototypes or processes of new or improved products. Research and development does not include market research, routine consumer product testing, sales research, research in the social sciences or psychology, non-technological activities, or technical services.
- "Research and development facility" means a facility that is predominately engaged in research and development activities. For purposes of this paragraph, the term "predominately" means at least 51 percent of the time.
- "Rural area" means a rural city, rural community, or a rural county as defined pursuant to s. 288,106, F.S.

Application

An innovation business or research and development entity shall submit an application to Enterprise Florida, Inc. (EFI), prior to deciding to locate or expand in Florida, which shall include:

- The applicants' Federal Employer Identification Number (FEIN), unemployment account number, state sales tax registration number;⁴
- The proposed location of a project within Florida;
- A description of the type of business activity, product, or research and development undertaken by the applicant, including the North American Industry Classification System code;
- The applicant's projected investment in the project;
- The total investment from all sources in the project;
- The anticipated number of net new full-time equivalent jobs created as of December 31st of each year in Florida and the average wage of such jobs;
- The total number of full-time equivalent employees currently employed by the applicant in Florida, if applicable;
- The anticipated project commencement date;
- An explanation regarding the significance of the award as a factor to induce business to locate or expand in Florida; and

⁴ These items must be provided if available, however, they shall be provided prior to disbursement.

- An estimate of proportion of revenues from project that will be generated outside Florida, if applicable.

Eligibility

To be eligible, an applicant must establish the following to the satisfaction of EFI and OTTED:

1. The proposed jobs by the project will pay at least 130% of the average private sector wage. OTTED may waive this requirement at its discretion or at the request of EFI, only if:
 - The project is located in a rural area, brownfield area, or in an Enterprise Zone,
 - The merits of the project or specific circumstances in the community in relationship to the project warrant such action;
 - If Enterprise Florida, Inc. recommends such waiver, it must be in writing and explain a specific justification supporting the waiver; and
 - If the director of OTTED waives the requirement, it must be stated in writing and explain the reasons for granting the waiver.

2. For research and development projects, the project will serve as a catalyst for an emerging or evolving technology cluster, demonstrate a plan for significant higher education collaboration, provide the state a break-even return on investment within a 20-year period, and receive a one-to-one match from the local community. However, the match requirement may be reduced or waived in rural areas of critical economic concern or reduced in rural communities, brownfields, and enterprise zones within an urban county.

3. For innovation business projects, the project will:
 - Create at least 1,000 direct, new jobs at the business; or if the project is located in a rural area, brownfield area, or Enterprise Zone, the project will create at least 750 direct, new jobs.
 - The activity or product for the applicant's project must be within an industry or industries that have been designated as a target industry business under s. 288.106 or a high-impact sector under s. 288.108.
 - The cumulative investment in the project is at least \$500 million within a 5-year period; or if the project is located in a rural city or rural county, or in an enterprise zone, the cumulative investment in the project must exceed \$375 million within a 5-year period.

Evaluation

The bill requires Enterprise Florida, Inc, to evaluate proposals for innovation incentive awards and recommend use of appropriated funds to OTTED. In its recommendation to OTTED, Enterprise Florida, Inc. must:

- Describe the project, its required facilities, and the associated product, service, or research and development associated with the project;
- The percentage of match provided for the project;
- Provide the number of full-time equivalent jobs that will be created by the project, the total estimated average annual wages of such jobs, and the types of business activities and jobs stimulated by the project;
- Provide the amount of the cumulative investment to be dedicated to the project within 5 years and the total investment expected in the project if more than 5 years;
- Describe the economic and fiscal impacts on the local and state economies relative to the investment
- Provide a statement of any special impacts the project is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges;
- Provide a statement of any anticipated or proposed relationships with state universities;
- Provide a statement of the role the incentive is expected to play in the decision of the applicant to locate or expand in this state;

- Provide an explanation of the amount of the award needed to cause the applicant to locate or expand in this state;
- Provide a discussion of the efforts and commitments made by the local community in which the project is to be located to induce the applicant's location or expansion, taking into consideration local resources and abilities; and
- Provide a recommendation for specific performance criteria the applicant would be expected to achieve to receive any payments from the fund and penalties or sanctions for failure to meet or maintain performance conditions.

For research and development facility projects, Enterprise Florida, Inc. must:

- Provide OTTED with a description of the projects' potential to serve as a catalyst for an emerging or evolving technology cluster;
- Describe the extent to which the project has or could have a long-term collaborative research and development relationship with a state university or community college;
- Describe the existing or projected impact of the project on established technology clusters or targeted industry sectors;
- Describe the project's contribution to the diversity and resiliency of the innovation economy of Florida; and
- Describe the project's impact on special needs communities, including rural areas, distressed urban areas, and enterprise zones.

Negotiation of Awards/Process for Approval

OTTED may negotiate the proposed award for any applicant meeting the requirements of the bill, after consultation with Enterprise Florida, Inc., taking into consideration the amount of incentive needed to cause the applicant to locate or expand in this state in conjunction with other relevant applicants. Emphasis must be given to those projects with a potential to stimulate additional private investment and high-quality employment opportunities.

Once Enterprise Florida, Inc. makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval of the award to the Governor. In addition, OTTED must provide the Governor with proposed performance conditions the applicant must meet to obtain the award. The Governor must consult with the President of the Senate and Speaker of the House of Representatives before giving approval for an award. Thereafter, the Governor shall release funds pursuant to the requirements of s. 216.177, F.S.

Performance Contract

Once approved by the Governor, OTTED enters into a contract with the business and establishes the conditions for payment of moneys. Conditions in the contract include those factors identified by Enterprise Florida, Inc. in its request to OTTED, and sanctions for not meeting performance conditions, including any claw-back provisions. Enterprise Florida, Inc. shall assist OTTED in validating the performance of an innovation business or research and development facility that has received an award. Moreover, at the conclusion of the agreement, Enterprise Florida, Inc., shall report, within 90 days, the result of the innovation incentive award to the Governor and the Legislature.

Ethics

The bill requires that Enterprise Florida, Inc. develop business ethics standards based on appropriate best industry practices, which shall be applicable to all award recipients and included in all award agreements. These standards shall address ethical duties of business enterprises, fiduciary responsibilities of management and compliance with Florida law. Enterprise Florida, Inc. may collaborate with the State University System in reviewing such standards, which shall be presented to the Governor, President of the Senate and Speaker of the House of Representatives by December 31, 2006.

Permit Review

The bill provides that the agencies involved in the project shall work with the office to review sites proposed for the location of facilities eligible for the Innovation Incentive Program. Within 20 days of

the request for the review by the office, the agencies shall provide the office with a statement as to each site's necessary permits under local, state and federal law and a statement identifying any significant permitting issues, which may result in a denial or significant delay in issuing a license.

Effective Date; Repeal of Prior Acts The bill provides that the law will take effect on July 1, 2006 and will be repealed on July 1, 2011.

C. SECTION DIRECTORY:

Section 1. Amends s. 288.1088, F.S., to provide eligibility requirements and exemptions, to require the Governor to provide the Legislature with evaluations of projects recommended for approval.

Section 2. Creates s. 288.1089, F.S.; providing for the creation of a program, definitions, awards, limitations, application procedure, eligibility requirements, review and award process, report requirements, and ethics standards.

Section 3. Amends s. 403.973, F.S., to create a review process.

Section 4. Amends s. 288.0655, F.S., to conform a cross-reference.

Section 5. Provides appropriations for Quick Action Closing Fund.

Section 6. Provides appropriations to OTTED.

Section 7. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriate \$250,000,000 from nonrecurring general revenue to OTTED for fiscal year 2006-2007.

The bill appropriate \$50,000,000 from nonrecurring general revenue to the Quick Action Closing Fund for the 2006-2007 fiscal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds, does not reduce the county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted a strike-all amendment that made the following changes:

- It removes redundant legislative findings and intent language;
- It removes the power of the Governor to seep unencumbered funds from the Incentive Account;
- It creates a direct appropriation to OTTED from nonrecurring general revenue;
- It provides a carry forward of unencumbered funds through fiscal year 2010-2011; and
- It requires OTTED to review proposed sites for approved projects and it requires agencies involved in the permitting process for the project to notice OTTED of permitting issues within 20 days.

On April 11, 2006, the Fiscal Council adopted one amendment to HB 1283 which removed the language which created the Innovation Incentive Account within the Economic Development Trust Fund.

On April 20, 2006, the Commerce Council adopted an amendment that makes technical changes and corrections to conform the bill to the Senate bill. In addition the amendment makes the following substantive changes:

- It increases eligibility criteria for projects funded by the Quick Action Closing Fund;
- It appropriates \$50 million to the Quick Action Closing Fund;
- It provides definitions for "brownfield area," "cumulative investment," "enterprise zone," "fiscal year" and "rural area" consistent with current Florida law;
- It extends the period of time for an innovation business to make required cumulative investment in a Florida project from 3 to 5 years;
- It includes claw-back provisions as one of the sanctions that may be imposed on a project that fails to meet performance conditions; and
- It requires Enterprise Florida to develop business ethics standards that will apply to each innovation award recipient, to work with the State University System in setting the standards, and to report them to the Governor, Senate President and Speaker by December 31 of this year. These standards are to be based on appropriate best industry practices and are intended to prevent unethical and illegal conduct in the use of state dollars.

This analysis is drawn to the committee substitute.